

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ATHENA ART FINANCE CORP.,

Plaintiff,

-against-

that

CERTAIN ARTWORK BY JEAN-MICHEL
BASQUIAT ENTITLED HUMIDITY, 1982,
In Rem,

Defendant,

SATFINANCE INVESTMENT LIMITED,

Interested Party.

Case No. 20-cv-4669

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT, under Title 28, Sections 1332, 1441, and 1446 of the United States Code, interested party and real party in interest Satfinance Investment Limited (“SIL”), by and through its undersigned counsel, hereby removes all the claims and causes of action asserted in the Supreme Court of the State of New York, County of New York, *Athena Art Finance Corp. v. Certain Artwork by Jean-Michel Basquiat Entitled Humidity, 1982, In Rem*, Index No. 652258/2020 (the “State Court Action”), to the United States District Court for the Southern District of New York.

PRELIMINARY STATEMENT

Removal is proper because complete diversity of citizenship exists among Plaintiff and all the potentially “Interested Persons” in this *in rem* proceeding, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

Plaintiff Athena Art Finance Corp. (“Athena”) is a Delaware corporation with its principal place of business in New York, New York. Athena is in the business of originating art-backed loans, *i.e.*, loans collateralized by artwork. Plaintiff commenced the State Court Action seeking a declaration as to its alleged rights and interests in an artwork by Jean-Michel Basquiat (the “Painting”).

Plaintiff filed the action *in rem* against the Painting only, but named various “interested persons” in the Verified Complaint who have asserted competing claims to the Painting, and therefore will be adverse to Plaintiff in these proceedings: (1) SIL (as well as its beneficial owner, Boris Pesko, and its advisor, Aleksandar Pesko); (2) Delahunty Fine Art Ltd. (and its principal, Damian Delahunty, collectively, “Delahunty”); and (3) Inigo Philbrick Limited (“IPL”) and 18 Boxwood Green Limited (“Boxwood”) (and their sole beneficial shareholder, Inigo Philbrick) (collectively, the “Interested Persons”). None of these Interested Persons is a citizen of Delaware or New York, and therefore there is complete diversity of citizenship among all the parties.

Delahunty, through counsel, has consented to removal. Philbrick has been a fugitive from justice, until his recent arrest and extradition late last week, so it has not been practicable to seek the consent of Philbrick, IPL, or Boxwood.

Against this background, removal to this Court is proper and appropriate.

GROUND FOR REMOVAL

The grounds for removal are as follows:

1. Plaintiff commenced the State Court Action against an *in rem* Defendant Painting.
2. Plaintiff is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in New York, New York.

3. Interested Person SIL is a foreign corporation incorporated in the British Virgin Islands. Boris Pesko and Sasha Pesko are individual citizens of the United Kingdom domiciled in Europe.

4. Interested Person Delahunty Fine Art Ltd. is a foreign corporation organized in the United Kingdom with its principal place of business in London. Damian Delahunty is an individual citizen of the United Kingdom domiciled in Europe.

5. Interested Person Inigo Philbrick is an individual citizen of the United States domiciled in Europe.

6. Interested Person IPL is a foreign private limited company organized in the United Kingdom with a registered office address in London, England.

7. Interested Person Boxwood is a foreign company incorporated in the Bailiwick of Jersey.

8. This Court has subject-matter jurisdiction over this matter under 28 U.S.C. § 1332 on the basis of diversity jurisdiction, and removal is proper under 28 U.S.C. §§ 1441 and 1446.

9. Venue is proper in this District because this Court constitutes the “district court of the United States for the district and division embracing the place where [the State Court Action] is pending.” 28 U.S.C. § 1441(a).

10. Attached as Exhibit A is a copy of all process, pleadings, and orders filed in the State Court Action. *See* 28 U.S.C. § 1446(a).

PROCEDURAL HISTORY

11. On June 2, 2020, Athena commenced the State Court Action by filing a Summons with Notice asserting rights to the Painting in connection with a loan that it had made to Boxwood that purported to be collateralized in part by the Painting. Athena claims that

Boxwood defaulted on the loan, and that it therefore is authorized to foreclose on, and dispose of the Painting by public or private sale.

12. Athena named various “Interested Persons” in the State Court Action who it knows have asserted, or are likely to assert, competing interests in the Painting.

13. Plaintiff acknowledges in the June 17, 2020, Verified Complaint that the Interested Persons, including SIL, claim to have an enforceable legal interest in the Painting:

By email dated October 18, 2019, attorney Simon Bushell of Signature Litigation LLP in London advised Athena that his client, Satfinance Investment Limited (“Satfinance”), claimed an interest in the Basquiat. Shortly thereafter, Satfinance commenced an action against Athena in London, England (“Satfinance’s London Action”).

(Compl. at ¶ 16.)

14. As recounted in Plaintiff’s Verified Complaint, SIL commenced a lawsuit against Athena in November 2019 in London, England, seeking a declaration as to its legal and beneficial title to the Painting, and the return of the Painting from Athena.

15. The High Court granted a November 14, 2019, Preliminary Injunction enjoining Athena from selling, transferring or otherwise disposing of the Painting during the pendency of the dispute. The UK action was dismissed solely on jurisdictional grounds on June 2, 2020, and Athena commenced these proceedings the same day by filing a Summons with Notice.

Diversity of Citizenship Among Plaintiff and the Interested Persons.

16. Plaintiff Athena Art Finance Corp. is a corporation organized and existing under the laws of the state of Delaware with its principal place of business located at 300 Park Avenue, 15th Floor, New York, New York 10022.

17. SIL is a foreign corporation incorporated in the British Virgin Islands.

18. Boris Pesko and Sasha Pesko are individual citizens of the United Kingdom domiciled in Europe.

19. Delahunty Fine Art Ltd. is a foreign corporation organized in the United Kingdom with its principal place of business in London.

20. Damian Delahunty is an individual citizen of the United Kingdom domiciled in Europe.

21. Inigo Philbrick is an individual citizen of the United States domiciled in Europe.

22. Inigo Philbrick Ltd. is a foreign private limited company organized in the United Kingdom with a registered office address at 55 Grosvenor Street, Mayfair, London, W1K 3HY.

23. 18 Boxwood Green Limited is a foreign company incorporated in the Bailiwick of Jersey.

24. The amount in controversy exceeds \$75,000, as the Painting at issue is a multi-million-dollar artwork.

25. 28 U.S.C. § 1332(a) provides that this Court has original jurisdiction over any matter where “the matter in controversy exceeds the sum or value of \$75,000” and the matter is “between . . . citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State [. . .].”

26. None of the Interested Persons is “domiciled” in New York or Delaware.

**Athena Filed the State Court Complaint Yesterday;
The State Court Has Not Taken Any Action.**

27. Athena filed its Verified Complaint on June 17, 2020, and at the same time it filed a Proposed Order to Show Cause and a Request for Judicial Intervention, seeking an order

permitting the immediate sale of the Painting. The state court has not yet taken any affirmative steps with respect to the Proposed Order to Show Cause or the Request for Judicial Intervention. At this time, the Proposed Order is docketed but unsigned. (*See* Ex. A at 13-15.)

**SIL's Notice of Removal is Timely and
On Consent of Other Interested Persons.**

28. This notice of removal is timely under 28 U.S.C. § 1446(b) because it was filed within 30 days of the receipt by the Interested Persons of a copy of the initial pleading.

29. No previous application has been made for the relief herein requested.

30. Interested Persons Delahunty Fine Art Ltd. and Damian Delahunty, through counsel, have consented to removal.

31. Inigo Philbrick has been a fugitive from justice until his arrest and extradition to the United States late last week. Philbrick has been named as the defendant in a criminal complaint that was unsealed on June 12, 2020, in the United States District Court for the Southern District of New York. *See United States v. Philbrick*, Case No. 20 MAG 4507 (S.D.N.Y.). Accordingly, it has not been practicable to seek the consent of Philbrick, IPL, or Boxwood.

32. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and papers filed in the State Court Action are attached hereto as Exhibit A.

33. In accordance with 28 U.S.C. § 1446(d), promptly after filing notice of removal, SIL will give written notice to all Plaintiff and all Interested Persons and will file a copy of this notice of removal in the State Court Action.

34. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a).

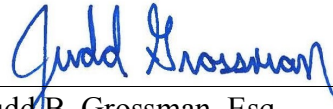
WHEREFORE, Satfinance Investment Limited respectfully submits that the State Court Action is properly removed to this Court from the Supreme Court of the State of New York.

Dated: June 18, 2020
New York, New York

Respectfully submitted,

GROSSMAN LLP

By: _____



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